

401 KAR 9:020. Section 401 Water Quality Certification fees and certification timetable.

RELATES TO: KRS Chapter 224, 224.10-220, 224.10-100, 224.16-050, 224.16-070, 224.71-100, 33 U.S.C. 1251-1387, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220, 224.16-050, 33 U.S.C. 1251, 1341

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet to establish a fee for the cost of processing applications for permits authorized under KRS Chapter 224. KRS 224.10-220 requires the cabinet to establish timetables for the issuance of permits. KRS 224.16-050 authorizes the cabinet to certify, pursuant to 33 U.S.C. 1341, that applicants for a federal permit for the construction or operation of facilities, which may result in a discharge into the waters of the Commonwealth, will comply with the applicable provisions of the Federal Water Pollution Control Act, 33 U.S.C. 1251-1387. This administrative regulation establishes fees and a certification timetable for processing applications for Section 401 Water Quality Certifications. EO 2008-507 and 2008-531, effective June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation is neither more nor less stringent than federal requirements.

Section 1. Definitions. (1) "Agriculture operation" is defined by KRS 224.71-100(1).

(2) "Natural person" means an individual person distinguished from a person as defined in KRS 224.01-010(17).

(3) "Personal residence" means a natural person's primary place of abode.

Section 2. Fee Remittance. Fees for water quality certifications shall be remitted to the Kentucky State Treasurer, which shall be for the sole use of the cabinet in administration of the 401 water quality certification program and shall be in addition to money appropriated by the General Assembly for the use of the cabinet.

Section 3. Review Fees for Individual Water Quality Certification Applications for Stream Impacts. Fees for the review of individual water quality certification applications for stream impacts shall be as follows:

- (1) \$1,000 for an impact greater than 500 linear feet but less than 1,000 linear feet;
- (2) \$2,500 for an impact of 1,000 to 5,000 linear feet; and
- (3) \$5,000 for an impact greater than 5,000 linear feet.

Section 4. Review Fees for Individual Water Quality Certification Applications for Wetland Impacts. (1) Fees for the review of individual water quality certification applications for wetland impacts shall be \$500 per acre of impacted wetland.

(2) The fee charged for review of an individual water quality certification application for wetland impacts shall not exceed \$5,000.

Section 5. Exemptions. The following shall be exempt from Section 401 certification fees:

- (1) Applications for Section 401 general water quality certifications;
- (2) Agriculture operations; and
- (3) Personal residences.

Section 6. Timetable for Review of Section 401 Water Quality Certifications.

(1) The cabinet shall issue its final decision on a certification application within 120 calendar days after receipt of a complete application, pursuant to 401 KAR 9:010, Section 1(1), except as provided in subsection (3) of this section.

(2) Within thirty (30) calendar days of initial receipt of an application for a section 401 water quality certification, the cabinet shall issue a notice of deficiency if the application is not complete.

(3) Timetable exclusions. Time periods that shall not be counted towards the cabinet review schedule referenced in subsection (1) of this section include:

(a) Time waiting for the applicant to respond to a notice of deficiency;

(b) Time during which the certification, application, decision, or related matter is the subject of litigation, including administrative hearings or court proceedings, between the cabinet and the applicant;

(c) The public notice period set forth in 401 KAR 9:010;

(d) Time waiting for Section 401 Water Quality Certification fees to be paid after the cabinet's certification decision regarding the application is made; and

(e) Other times as agreed to by the applicant and the cabinet. (35 Ky.R. 35; 815; eff. 10-8-2008; Crt eff. 9-5-2018.)